

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0391
SALES TAX
For Years 2000 and 2001**

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ISSUE

I. Sales Tax—Assessment of Sales Tax on sales to an "out-of-state" customer

Authority: IC 6-8.1-5-1(b); IC 6-2.5-2-1; IC 6-2.5-8-8; IC 6-2.5-3-7;
IC 6-2.5-6-7; IC 6-2.5-4-1(e).

Taxpayer protests the assessment of sales tax on sales Taxpayer claims were made to an out-of-state customer.

II. Use Tax—Assessment of Use Tax on Forklift

Authority: IC 6-2.5-3-2(a); IC 6-2.5-3-3; IC 6-2.5-3-4; IC 6-2.5-3-5;
IC 6-2.5-5-3; IC 6-8.1-5-1(b).

Taxpayer protests the assessment of use tax on forklift used at its facility.

STATEMENT OF FACTS

Taxpayer operates an Indiana location that sells masonry stones to various contractors. Taxpayer purchases limestone blocks and processes the raw material according to each customer's specifications—which includes cutting the blocks to various sizes.

Taxpayer engaged in retail transactions with an out-of-state company and did not charge sales tax. The out-of-state customer picked up the tangible personal property at Taxpayer's Indiana location and used the materials to complete a job at an Indiana worksite. The customer was not registered as an Indiana retail merchant and did not issue an Indiana exemption certificate. The Department assessed Taxpayer for the sales tax that was not collected.

Taxpayer purchased a forklift, which is used to move and hold limestone slabs. The auditor determined that the forklift was not used in an exempt manner and the Department assessed use tax.

I. Sales Tax—Assessment of Sales Tax on sales to "out-of-state" customers

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). IC 6-2.5-2-1 imposes an excise tax, commonly known as sales tax, on retail transactions made in Indiana. The person who acquires property in a retail transaction is liable for the sales tax due on the transaction and is required to pay the tax to the retail merchant. *Id.* The retail merchant is required to collect the tax as agent for the state. *Id.* IC 6-2.5-8-8 states that a person who makes a purchase which is exempt from the sales or use taxes may issue an exemption certificate to the seller to not be charged the tax. The person is required to provide the seller with a valid Indiana exemption certificate prescribed and approved by the Department. *See id.* A seller who accepts a proper exemption certificate has no duty to collect or remit the sales or use tax that otherwise would be due on that purchase. *Id.* IC 6-2.5-3-7 states that a person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana, unless the person or the retail merchant can produce evidence to rebut that presumption. A retail merchant is not required to produce evidence of non-taxability if the retail merchant receives a valid Indiana exemption certificate from the person who acquired the property. *See id.* IC 6-2.5-6-7 requires a retail merchant to pay to the Department the sales tax due on taxable transactions regardless of whether the merchant actually collected the sales tax due.

Here is the concise summation of the statutes outlined above. When a person makes a purchase in Indiana, he is required to pay the sales tax to the merchant. The merchant is required to collect the sales tax, and must charge the sales tax unless the merchant receives a valid Indiana exemption certificate from the person making the purchase. A merchant is required to submit the sales tax due on taxable purchases, whether or not the merchant collected the sales tax due.

In this case, Taxpayer states that it was given an exemption certificate issued by the State of Illinois. Taxpayer received an order from an Illinois customer. Taxpayer prepared the order and the Illinois customer came to Taxpayer's location in Indiana and hauled away the purchase in the customer's own truck.

Taxpayer is required to collect sales tax on all sales that are delivered in Indiana. Taxpayer is not to consider from where a customer comes—but is to determine where the transfer of property is made. If the transfer is made in Indiana, sales tax is due. The only exemption certificates that are valid to abate the collection of Indiana sales tax are those exemption certificates that are approved by the Indiana Department of Revenue; an Illinois certificate does not meet this requirement. For this reason, Taxpayer is liable for the sales tax that it should have collected but did not. Under Indiana statute, a transfer of property occurs at the point where Taxpayer no longer has control of and liability for the property. *See* IC 6-2.5-4-1(e). In this case, Taxpayer transferred the property to the

Illinois customer at Taxpayer's Indiana location, from where the customer drove away with the property.

FINDING

For the reasons stated above, Taxpayer's protest is denied .

II. Use Tax—Assessment of Use Tax on Forklift

DISCUSSION

IC 6-2.5-3-2(a) imposes an excise tax, known as the use tax, on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction. The use tax is imposed at the same rate as the Indiana sales tax, IC 6-2.5-3-3, but credit against the amount owed is given for sales or use tax paid in Indiana or elsewhere in the United States. *See* IC 6-2.5-3-4 and IC 6-2.5-3-5. IC 6-2.5-3-4 exempts from use tax property acquired in a transaction that is wholly or partially exempt from sales tax and the property is being used, stored, or consumed for the purpose for which it was exempted. If a person purchases tangible personal property exempt from sales and use tax but subsequently uses, stores, or consumes that property for a nonexempt purpose, then the person is required to pay the use tax. *Id.* IC 6-2.5-5-3 grants an exemption for manufacturing machinery, tools, and equipment acquired for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

Taxpayer purchased a forklift and did not pay sales tax. The forklift is used to move and hold limestone slabs in processing. The auditor determined that the forklift is not used in an exempt manner. Taxpayer explained the use of the forklift to the hearing officer and also provided a brief written explanation and has demonstrated that the forklift is being used in an exempt manner.

FINDING

For the reasons stated above, Taxpayer's protest is sustained.